NO. 96183-2

**SUPREME COURT OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Petitioner,

v.

JOEL VILLELA,

Respondent.

# BRIEF OF AMICUS CURIAE WASHINGTON STATE PATROL

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## I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Patrol (State Patrol) is tasked with protecting Washington's roadways from impaired drivers. The unfortunate reality is impaired driving presents a real and awful risk to Washington's citizens. A mandatory impound for drivers arrested for certain impaired driving crimes is a common sense and constitutional means to separate an impaired driver from the vehicle. Given the paramount public safety risk presented by an impaired driver getting behind the wheel of a vehicle, a mandatory impound and 12-hour hold is reasonable and consistent with this Court's jurisprudence that evaluates the constitutionality of impounds under a rubric of reasonableness.

In 2011, in the wake of a tragic impaired driving incident, the Legislature passed Hailey's Law, RCW 46.55.360. This law mandates (with limited exceptions for farm transport and commercial vehicles) impoundment of a vehicle driven by a person arrested for Driving Under the Influence (DUI), RCW 46.61.502, or Physical Control, RCW 46.61.504. RCW 46.55.360(1)(a). The impounded vehicle must be held for 12-hours after arriving at the tow yard. RCW 46.55.360(2)(a). However, the statute allows a registered or legal owner (who is not the arrested impaired driver) to redeem the vehicle after it arrives at the tow yard. RCW 46.55.360(2)(a) and (3)(a). Underpinning this reasonable statute to remove the means of

committing an impaired driving offense are detailed legislative findings, which articulate a rational public safety purpose. RCW 46.55.350(1).

Hailey's Law is a constitutional statute that provides "authority of law" to law enforcement officers to impound a vehicle driven by an impaired driver. This Court has yet to consider the constitutionality of a mandatory impound statute. And Hailey's Law more than meets constitutional muster. Undoubtedly, an officer must consider reasonable alternatives before ordering a community caretaking impound or a discretionary impound. But an officer need not consider reasonable alternatives in every circumstance – the question is whether the impound is reasonable. Taking custody of a stolen vehicle or vehicle as evidence of a crime (without considering reasonable alternatives) is reasonable. By the same token, impounding an arrested impaired driver's vehicle is reasonable.

First, the circumstances facing an officer in a Hailey's Law impound present the same significant public safety risk - the driver has been arrested (based upon probable cause) for DUI or Physical Control. These are crimes inextricably tied to the motor vehicle and present immediate public safety risks; impoundment mitigates those risks. Second, a driver arrested for an impaired driving offense has a diminished expectation of privacy, impoundment (compared to mandatory booking) is narrowly tailored, and it furthers the compelling governmental interest in protecting Washington's

citizens from impaired drivers. Accordingly, the State Patrol respectfully requests this Court find Hailey's Law constitutional.

## II. ISSUE ADDRESSED BY AMICUS

Whether RCW 46.55.360 is a constitutional statute providing "authority of law" for a reasonable, mandatory impound and 12-hour hold of a vehicle after the driver has been arrested for DUI or Physical Control.

## III. STATEMENT OF THE CASE

The State Patrol adopts the statement of facts as set forth in the Petitioner's briefs.

## IV. ARGUMENT

Washington's constitution endows the Legislature with the ability to enact statutes providing "authority of law" to intrude upon a citizen's private affairs. "A vehicle may lawfully be impounded if authorized by statute or ordinance." *State v. Bales*, 15 Wn. App. 834, 835, 552 P.2d 688 (1976). Respondent Joel Villela contends that the "impoundment exception to the warrant requirement" only applies where there are no reasonable alternatives, and Hailey's Law is thus unconstitutional. Not so.

This Court has long recognized that a statute may authorize an impound. There is no question that Hailey's Law authorizes a mandatory impound when a driver has been arrested for Physical Control or DUI. The question is whether a mandatory impound statute – supported by detailed

legislative findings about the tragic toll of impaired driving on Washington's roadways – is reasonable and constitutional. It is.

Villela must prove beyond a reasonable doubt that Hailey's Law is unconstitutional. He has not done so. First, a court should evaluate a mandatory impound statute under a rubric of reasonableness. Reasonableness may include considering reasonable alternatives in a community caretaking or discretionary impound. But where an officer is faced with an impaired driver with ready access to a vehicle, there is no reasonable alternative to impounding the vehicle. Second, Hailey's Law meets constitutional muster because an arrested, impaired driver has a diminished expectation of privacy in the instrument to harm another - the vehicle – and impoundment and a 12-hour hold is narrowly tailored to further the compelling governmental interest in preventing collisions, injuries, and deaths resulting from an impaired driver getting back behind the wheel.

### A. A Statute Authorizing an Intrusion into Private Affairs is Presumed Constitutional

Hailey's Law is presumed constitutional, and Villela must show unconstitutionality beyond a reasonable doubt. Washington's constitution article I, section 7 provides: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Under this

constitutional provision, courts evaluate: (1) "whether the action complained of constitutes a disturbance of one's private affairs"; and (2) if so, "whether authority of law justifies the intrusion." *State v. Puapuaga*, 164 Wn.2d 515, 522, 192 P.3d 360 (2008). Authority of law includes a constitutional statute, a search warrant, or a recognized exception to the warrant requirement. *State v. Reeder*, 184 Wn.2d 805, 817, 365 P.3d 1243 (2015) (citation omitted).[1] "Permitting the disturbance of private affairs pursuant to a constitutional statute represents the framers' intent to give both the legislature and the courts the ability to provide the law authorizing the disturbance of a citizen's private affairs." *Id.* (citation omitted). Granted, a statute does not provide "authority of law" if it authorizes an unconstitutional search or seizure. *See Robinson v. City of Seattle*, 102 Wn. App. 795, 813, 10 P.3d 452 (2000).

But a criminal defendant claiming that a statute does not provide "authority of law," and challenging a statute's constitutionality, must prove its unconstitutionality beyond a reasonable doubt. "[A] statute is presumed

[1] Recognized exceptions to the warrant requirement must be proven by clear and convincing evidence. *See State v. Green*, 177 Wn. App. 332, 340, 312 P.3d 669 (2013) (State must show that inventory search's scope was constitutional by clear and convincing evidence); *State v. Morgan*, 440 P.3d 136, 138 (2019) (To show exigent circumstances justified a search, the "State must establish the exception to the warrant requirement by clear and convincing evidence.") (citations and quotation omitted). This standard does not apply to other "authorities of law" such as a search warrant or a statute. Here, the analysis is not whether the State has proven the impound by clear and convincing evidence. Rather, the analysis is whether the challenger has shown RCW 46.55.360 is unconstitutional beyond a reasonable doubt.

to be constitutional and the burden is on the party challenging the statute to prove its unconstitutionality beyond a reasonable doubt." *Island Cty. v. State*, 135 Wn.2d 141, 146, 955 P.2d 377 (1998) (citations omitted). In this context, the "beyond a reasonable doubt" standard "refers to the fact that one challenging a statute must, based on argument and research, convince the court that there is no reasonable doubt that the statute violates the constitution." *Id.* at 147. "[T]he Legislature speaks for the people and [courts] are hesitant to strike a duly enacted statute unless fully convinced, after a searching legal analysis, that the statute violates the constitution." *Id.* (citations omitted).

The Legislature spoke for Washingtonians in passing Hailey's Law. RCW 46.55.360(1)(a) provides:

> When a driver of a vehicle is arrested for a violation of RCW 46.61.502 [DUI] or RCW 46.61.504 [Physical Control], the vehicle is subject to summary impoundment and except for a commercial vehicle or farm transport vehicle under subsection (3)(c) of this section, the vehicle must be impounded. With the exception of the twelve-hour hold mandated under this section, the procedures for notice, redemption, storage, auction, and sale shall remain the same as for other impounded vehicles under this chapter.

In this situation, "officers have no discretion as to whether or not to order an impound[.]" RCW 46.55.350(2)(b). Hailey's Law also permits a registered or legal owner (who is not the arrested impaired driver) to redeem the vehicle after it arrives at the tow yard (and before the 12-hours has

expired). RCW 46.55.360(2)(a) and (3)(a). The Legislature made detailed findings to explain its purpose:

> (a) Despite every effort, the problem of driving or controlling a vehicle while under the influence of alcohol or drugs remains a great threat to the lives and safety of citizens. Over five hundred people are killed by traffic accidents in Washington each year and impaired vehicle drivers account for almost forty-five percent, or over two hundred deaths per year. That is, *impairment is the leading cause of traffic deaths in this state*;
>
> (b) Over thirty-nine thousand people are arrested each year in Washington for driving or controlling a vehicle while under the influence of alcohol or drugs. *Persons arrested for driving or controlling a vehicle while under the influence of alcohol or drugs may still be impaired after they are cited and released and could return to drive or control a vehicle. If the vehicle was impounded, there is nothing to stop the impaired person from going to the tow truck operator's storage facility and redeeming the vehicle while still impaired*;
>
> (c) More can be done to deter those arrested for driving or controlling a vehicle under the influence of alcohol or drugs. Approximately one-third of those arrested for operating a vehicle under the influence are repeat offenders. *Vehicle impoundment effectively increases deterrence and prevents an impaired driver from accessing the vehicle for a specified time.* In addition, vehicle impoundment provides an appropriate measure of accountability for registered owners who allow impaired drivers to drive or control their vehicles, but it also allows the registered owners to redeem their vehicles once impounded. Any inconvenience on a registered owner is outweighed by the need to protect the public;
>
> (d) *In order to protect public safety and to enforce the state's laws, it is reasonable and necessary to mandatorily impound the vehicle* operated by a person who has been arrested for driving or controlling a vehicle while under the influence of alcohol or drugs.

RCW 46.55.350(1) (emphasis added).

The Legislature's findings more than meet any burden "to present sufficient evidence to show the reasonableness of the impoundment." *State v. Greenway*, 15 Wn. App. 216, 219, 547 P.2d 1231 (1976). Public safety – not general exploratory searches – is the driving motivation for Hailey's Law. By its nature, "impoundment refers to the taking of an object (usually a vehicle) into custody for some valid reason wholly apart from any purpose to search that object for incriminating matter." *State v. Davis*, 29 Wn. App. 691, 697, 630 P.2d 938 (1981) (citation omitted). And the legislative findings explicitly articulate this public safety prerogative:

> The legislature intends . . .
>
> To change the primary reason for impounding the vehicle operated by a person arrested for driving or controlling a vehicle under the influence of alcohol or drugs. *The purpose of impoundment under [Hailey's Law] is to protect the public from a person operating a vehicle while still impaired*, rather than to prevent a potential traffic obstruction[.]

RCW 46.55.350(2)(a) (emphasis added). Simply put, there is no reasonable alternative to protect public safety other than separating the driver from the vehicle by mandating impoundment. As discussed below, Hailey's Law meets constitutional muster, and Villela has not proven unconstitutionality beyond a reasonable doubt.

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## B. A Mandatory 12-Hour Impound Statute is Reasonable and Constitutional When a Person is Arrested for DUI or Physical Control

Under the rubric of reasonableness, RCW 46.55.360 is a constitutional statute and provides "authority of law" to temporarily impound an impaired driver arrestee's vehicle. An impoundment is a seizure and disturbance of private affairs. *See Davis*, 29 Wn. App. at 697. "Because impoundment involves a governmental taking, [courts have] found it must be reasonable in order to satisfy constitutional requirements." *State v. Barajas*, 57 Wn. App. 556, 561, 789 P.2d 321 (1990) (citing *State v. Reynoso*, 41 Wn. App. 113, 117-19, 702 P.2d 1222 (1985)). And in the context of a defendant challenging a vehicle inventory, a court's "first inquiry . . . is whether the state can show reasonable cause for the impoundment." *State v. Houser*, 95 Wn.2d 143, 148, 622 P.2d 1218 (1980).

This Court has long recognized three circumstances providing reasonable cause for lawfully impounding a vehicle:

> (1) as evidence of a crime, when the police have probable cause to believe the vehicle has been stolen or used in the commission of a felony offense; (2) under the 'community caretaking function' if (a) the vehicle must be moved because it has been abandoned, impedes traffic, or otherwise threatens public safety or if there is a threat to the vehicle itself and its contents of vandalism or theft *and* (b) the defendant, the defendant's spouse, or friends are not available to move the vehicle; and (3) in the course of enforcing traffic regulations if the driver committed a traffic offense for which the legislature has expressly authorized impoundment.

*State v. Tyler*, 177 Wn.2d 690, 698, 302 P.3d 165 (2013) (citing *State v. Williams*, 102 Wn.2d 733, 742-43, 689 P.2d 1065 (1984) (citing *State v. Simpson*, 95 Wn.2d 170, 189, 622 P.2d 1199 (1980)) (emphasis in original).

If the officer has probable cause that the vehicle is evidence of a crime or stolen, then the officer need not consider reasonable alternatives to seizing the vehicle. *See Tyler*, 177 Wn.2d at 698. And that's reasonable – an officer should not surrender evidence of a crime to another licensed driver nor leave it safely on the side of the road.

In contrast, an officer must consider reasonable alternatives before ordering a community caretaking impound. And that also makes sense. A community caretaking impound is based on protecting the vehicle from vandalism, or protecting the public from a vehicle parked in a dangerous location. *See Houser*, 95 Wn.2d at 152-53. If the vehicle can be moved by another licensed driver or remain safely parked, there is no community caretaking concern. By that same token, an officer must consider reasonable alternatives where a statute gives the officer discretion to order an impound. *See Reynoso*, 41 Wn. App. at 119 (former RCW 46.20.435(1)'s term "may" gives officers discretion to impound and officers must explore reasonable alternatives); *In re Impoundment of Chevrolet Truck*, 148 Wn.2d 145, 156, 60 P.3d 53 (2002) (State Patrol administrative regulation exceeded statutory

authority by mandating impound when statute gave officer discretion to order impound when driver is arrested for driving while license suspended); *In re 1992 Honda Accord*, 117 Wn. App. 510, 517, 71 P.3d 226 (2003) (municipal ordinance gave officers discretion to impound and the officer must consider reasonable alternatives); *see also State v. Froehlich*, 197 Wn. App. 831, 842, 391 P.3d 559 (2017).

Based on these cases discussing impounds in the context of community caretaking or discretionary statutes, courts have found that an officer must consider reasonable alternatives before impounding a vehicle. *See In re Impoundment of Chevrolet Truck*, 148 Wn.2d at 155 n. 8; *State v. Burgess*, 43 Wn. App. 253, 260-61, 716 P.2d 948 (1986); *Froehlich*, 197 Wn. App. at 838; *State v. Lee*, 7 Wn. App. 2d 692, 703, 435 P.3d 847 (2019). And "if there is no probable cause to seize the vehicle and a reasonable alternative to impoundment exists, then it is unreasonable to impound a citizen's vehicle." *Tyler*, 177 Wn.2d at 698 (citations omitted). That is certainly true for discretionary impounds. But that is not necessarily true for a statutorily mandated impound.

Hailey's Law presents an issue of first impression, which was not directly considered in *Houser*, *In re Impoundment of Chevrolet Truck*, or *Tyler*. None of those cases addressed a mandatory impound statute where the driver is arrested for DUI or Physical Control. As such, the appropriate

analysis is whether the impound is reasonable under the circumstances. *See State v. Montague*, 73 Wn.2d 381, 385, 438 P.2d 571 (1968) (an inventory is proper when "there is found to be reasonable and proper justification for such impoundment[.]"); *see also Tyler*, 177 Wn.2d at 699 ("Reasonableness of an impoundment must be assessed in light of the facts of each case.") (citations omitted). Simply put, "the ultimate issue is whether under all the facts and circumstances of the particular case there were reasonable grounds for an impoundment." *Greenway*, 15 Wn. App. at 219 (citations omitted); *State v. Hill*, 68 Wn. App. 300, 305, 842 P.2d 996 (1993); *Barajas*, 57 Wn. App. at 561. As such, the appropriate inquiry is whether the mandatory impound is reasonable in light of the basis for that impound – a driver arrested for DUI or Physical Control. And reasonableness is the means to evaluate the constitutionality of a seizure under the Fourth Amendment.

It is axiomatic that under the Fourth Amendment to the United States constitution all seizures must be reasonable. *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09, 98 S. Ct. 330, 54 L. Ed. 2d 331 (1977).[2] Impound is unquestionably a seizure because it involves the governmental taking of a

[2] Article I, § 7 certainly provides "qualitatively different" protections than the Fourth Amendment, *State v. Snapp*, 174 Wn.2d 177, 188, 275 P.3d 289 (2012) (citations omitted). But Washington courts evaluate the reasonableness of impounds. *See Tyler*, 177 Wn.2d at 699.

vehicle into its exclusive custody. The "touchstone" of Fourth Amendment protections is reasonableness, and the reasonableness of seizures "depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *Id.* (citation and quotation omitted). As discussed above, a police officer may seize a vehicle without considering reasonable alternatives in specific circumstances – such as when there is probable cause that the vehicle is evidence of a crime. When confronted with evidence of a crime, the balance tips in favor of the officer seizing the vehicle in order to obtain a search warrant. And that balance also tips in favor of impounding an arrested impaired driver's vehicle to prevent a collision, injury, or death.

Hailey's Law applies when a driver is arrested for DUI or Physical Control – circumstances where an officer must have probable cause that the driver is impaired and cannot safely operate the vehicle. *See State v. Walker*, 157 Wn.2d 307, 319, 138 P.3d 113 (2006) ("It is the probable cause requirement in [warrantless misdemeanor arrest] statutes that makes them constitutional.") (citation omitted). The probable cause for arrest requirement protects against unreasonable seizures in a mandatory impound context. And a Hailey's Law impound mitigates a significant public safety risk in every instance – a driver arrested for DUI or Physical Control getting back behind the wheel.

To be sure, a statute authorizing an impound (in and of itself) is not determinative of reasonableness. *See Montague*, 73 Wn.2d at 386-87; *see also State v. Singleton*, 9 Wn. App. 327, 333, 511 P.2d 1396 (1973) ("The mere commission of [a traffic offense] does not necessarily provide reasonable cause for impoundment.") (citations omitted). And courts have found "[i]mpoundment of a citizen's vehicle following his or her arrest on a traffic charge is inappropriate when reasonable alternatives to impoundment exist." *Bales*, 15 Wn. App. at 837. But the nature of an impaired driving arrest and the involvement of the vehicle as an instrumentality of the crime presents significant and imminent public safety concerns not at play for other impounds.

Admittedly, in *State v. Hardman*, 17 Wn. App. 910, 912-13, 567 P.2d 238 (1977), the Court of Appeals found that an officer improperly impounded an impaired driver's vehicle because the officer did not explore reasonable alternatives. But that Court was not presented with a mandatory impound statute supported by detailed legislative findings describing the substantial public safety risks in not separating the arrested driver from the vehicle.

Based on the legislative findings underlying Hailey's Law, the Legislature clearly balanced the public interest and the individual's right to be free from unreasonable seizure. Before Hailey's Law, former

RCW 46.55.113(1) authorized discretionary impounds when a driver was arrested for DUI or Physical Control. Laws of 2010, ch. 161, § 1; Laws of 2011, ch. 167, § 5. Under the former discretionary statute, the officer had to consider reasonable alternatives to impound. And those reasonable alternatives did not address the unacceptably high public safety risk when an impaired individual is behind the wheel.

Fundamentally, Hailey's Law impounds are reasonable because there is no other reasonable alternative. The paramount purpose is to separate an impaired driver from the vehicle long enough for the impairment to dissipate. And the alternatives of allowing another licensed driver to take the vehicle or leaving it safely on the side of the road are incapable of keeping the public safe if the impaired driver is not booked into jail.

The individual's interest in having continued access to his or her vehicle for 12 hours is outweighed by the public's interest in being free from drunk drivers. If an officer can seize a driver by arrest based on probable cause, the lesser intrusion of seizing the vehicle and holding it for up to 12 hours is also reasonable (and may alleviate the need to book the arrestee into jail to ensure he or she does not get back behind the wheel while impaired). Accordingly, a mandatory impound and 12-hour hold of an impaired driver's vehicle is reasonable and constitutional.

### C. Alternatively, a Statute Mandating Impound and a 12-Hour Hold When a Driver is Arrested for DUI or Physical Control is a Narrowly Tailored Seizure that Furthers the Compelling Governmental Interest in Stopping Drunk Driving

Apart from Hailey's Law authorizing reasonable impounds, RCW 46.55.360 constitutionally balances an arrested impaired driver's diminished privacy expectations with a narrowly tailored property deprivation to further compelling government interests. A statute provides authority of law when the class of persons subject to the statute have diminished privacy expectations, the intrusion is narrowly tailored, and the intrusion furthers a compelling government interest. *See State v. Olsen*, 189 Wn.2d 118, 128, 399 P.3d 1141 (2017). Hailey's Law satisfies this standard.

#### 1. A driver arrested for an impaired driving offense has a reduced privacy expectation in the vehicle

A driver who chooses to get behind the wheel while impaired, and is then arrested for DUI or Physical Control, has a reduced privacy expectation. And that diminished privacy expectation renders a mandatory impound reasonable. To be sure, courts "have not yet commented on the privacy expectations of a defendant released on his or her own recognizance." *Blomstrom v. Tripp*, 189 Wn.2d 379, 409, 402 P.3d 831 (2017). And this Court has "acknowledged a citizen does not lose any reasonable expectation of privacy simply by traveling in an automobile."

*State v. Surge*, 160 Wn.2d 65, 75, 156 P.3d 208 (2007) (citing *City of Seattle v. Mesiani*, 110 Wn.2d 454, 456-57, 755 P.2d 775 (1988)). But the nature of drunk driving reduces the arrestee's privacy expectation in his or her vehicle – precisely because the vehicle (when driven by a person under the influence of intoxicants) presents profound public safety concerns.

Hailey's Law only applies to persons arrested for DUI or Physical Control. An arrest must be based on probable cause. *See Walker*, 157 Wn.2d at 319. And once arrested and subject to detention, booking, and potentially up to 48 hours in jail before a probable cause determination, the arrestee has diminished privacy expectations. *See* CrRLJ 3.2.1; *see also State v. Parker*, 139 Wn.2d 486, 489, 987 P.2d 73 (1999) (search incident to arrest stems, in part, from "the concomitant lessening of the *arrestee*'s privacy interest") (citation omitted) (emphasis in original).[3] These diminished privacy expectations coupled with the nature of the charge – impaired driving or physical control – render a mandatory impound reasonable.

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[3] To be clear, the State Patrol is not suggesting that mandatory impoundment under Hailey's Law is supported as a search incident to arrest. A search incident to arrest does not include the vehicle except in very limited circumstances (which are not present here). *See Snapp*, 174 Wn.2d at 182. And Hailey's Law's purpose is not to search a vehicle. An inventory search is ancillary to the impound. Rather, the purpose is to prevent impaired driving.

### 2. A mandatory impound and 12-hour hold is narrowly tailored

An impaired driver or person in physical control presents an imminent and continuing public safety risk to Washington citizens. When a person has a reduced expectation of privacy based on his or her status as an impaired driving arrestee, a statute provides authority of law when the intrusion is narrowly tailored and furthers a compelling governmental interest. *See Olsen*, 189 Wn.2d at 126 – 128. "The State's action is narrowly tailored when the State has selected the less drastic means for effectuating its objectives." *Blomstrom*, 189 Wn.2d at 404 n. 22 (citations and quotation omitted). Here, a mandatory impound and 12-hour hold is the less restrictive option. Villela suggests that mandatory custodial arrest is a means to address the public safety risk without impounding the vehicle. Br. of Resp't, at 23-24. That may very well be so. But that is a far more drastic option than mandatory impoundment and possibly holding the vehicle for 12 hours. Accordingly, Hailey's Law is narrowly tailored.

### 3. A mandatory impound and 12-hour hold furthers the compelling governmental interest in protecting Washington's roadways from the substantial public safety risks presented by impaired drivers

Protecting Washington's roadways from impaired drivers is undoubtedly a compelling governmental interest. And a mandatory impound clearly furthers that compelling governmental interest. Roadway

safety is a paramount concern in this state. Every day, Washingtonians take to the roadways and sidewalks to travel to work, school, or for recreation. Impaired driving threatens the safety and lives of virtually every Washingtonian. Impaired driving is the leading cause of traffic deaths. RCW 46.55.350(1)(a). "Drunk drivers take a grisly toll on the Nation's roads, claiming thousands of lives, injuring many more victims, and inflicting billions of dollars in property damage every year." *Birchfield v. North Dakota*, __ U.S. __, 136 S. Ct. 2160, 2166, 195 L. Ed. 2d 560 (2016). Unquestionably, deterring drunk driving is a compelling governmental interest.

And there is a real and rational connection between this compelling governmental interest and impounding the arrested impaired driver's vehicle and holding it for 12 hours. Vehicle impoundment takes away the imminent public safety threat – an intoxicated driver getting back behind the wheel. RCW 46.55.350(1)(c). Without the 12-hour hold, an impaired driver could immediately go the tow yard and pick up the vehicle. The fact that another registered owner or legal owner could redeem the vehicle within 12 hours does not render this protection illusory. If another registered or legal owner returns the vehicle to an impaired driver, then that owner has thwarted the governmental purpose. Such poor judgment does not

undermine the overall objective of Hailey's Law. Accordingly, Hailey's Law is a constitutional statute.

## V. CONCLUSION

For these reasons, the State Patrol respectfully requests this Court to find that RCW 46.55.360 is a constitutional statute providing "authority of law" for mandatory impounds when a driver is arrested for DUI or Physical Control.

RESPECTFULLY SUBMITTED this 26th day of July, 2019.

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NO. 96183-2

**SUPREME COURT OF THE STATE OF WASHINGTON**

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| STATE OF WASHINGTON,<br><br>Appellant,<br><br>v.<br><br>JOEL VILLELA,<br><br>Respondent. | DECLARATION OF SERVICE |

I, Danielle Garrett, declare as follows:

On July 26, 2019, I sent, pursuant to the electronic service agreement, a true and correct copy of Motion for Leave to File Amicus Brief, Brief of Amicus Curiae Washington State Patrol, and Declaration of Service, addressed as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 26th day of July, 2019, at Seattle, Washington.

DANIELLE GARRET

**WASHINGTON STATE ATTORNEY GENERAL'S OFFICE - CRIMINAL JUSTICE DIVISION**

**July 26, 2019 - 2:15 PM**

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